

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2175 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

RAMJIBHAI B VAGHELA

Versus

LIMDI MUNICIPALITY

Appearance:

MR DK NAKRANI for Petitioner
MR MINESH C DAVE for Respondent No. 1
MR RD RAVAL for Respondent Nos. 2 to 7

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/08/97

ORAL JUDGEMENT

The petitioner was appointed as on 5.2.1986 as a Clerk and his grievance is that the respondent nos. 2 to 7 who had been appointed subsequent to the petitioner have been made permanent with effect from 1.11.1991 vide order dated 22.2.1997. The petitioner's grievance is that he was entitled to the benefit of the permanency in

preference to those who have been appointed subsequent to him but the respondent no.1 i.e. Limdi Municipality has not passed any order like one dated 28.2.1997 which was passed in respect of respondent nos. 2 to 7. In substance the petitioner claims parity in the matter of permanency qua the similarly situated employees and submitted that his right to permanency is rather preferential qua the respondent nos. 2 to 7 who have been appointed subsequent to him. The details of the period of working days every year from 1986 to 1996 have been set out in para 3/3 and the list has been annexed as Annexure "C". The eligibility certificate issued by the Chief Officer of the Municipality has been annexed as Annexure "D". The averments have also been made with regard to the allotment of work to him in various capacities and certain documents have also been annexed. The defence on behalf of the respondent Limdi Municipality is that orders with regard to the respondent nos. 2 to 7 have been passed on the basis of the Industrial Tribunal's order dated 18.7.1997 passed in Reference (IT) No.117/87. That may be so but the respondent municipality has failed to show that how the case of the present petitioner is different than the case of respondent nos. 2 to 7. No material whatsoever has been placed on record to show that the present petitioner is not entitled to the same order as has been passed with regard to the respondent nos. 2 to 7 on facts except the mention that it was with reference to Industrial Tribunal's, Rajkot order dated 28.2.1997 in Reference (IT) No.117/87. When the matter came up before this Court after the issue of the notice on 18.7.1997 it was given out on behalf of the municipality that the reference which had been made at the instance of the present petitioner was pending and therefore the order was not passed with regard to the present petition. It was therefore made clear in the order dated 18.7.1997 that the mere pendency of the reference could hardly be a ground to deny the same relief to the petitioner which had already been given by the municipality to the other similarly situated employees merely because in certain cases the reference has been decided and in the case of the petitioner the reference was pending. The learned Counsel appearing for the Limdi Municipality sought time to seek instructions from the municipality and to come with an appropriate orders. The matter was posted for 28.7.1997 and on that date Mr.S.U.Thim, Chief Officer of the Limdi Municipality was present and sought time for passing appropriate orders with regard to the petitioner on the same line as passed with regard to the respondent nos. 2 to 7. Yet no such orders were passed till this matter came up before this Court on 1.8.1997 and

therefore the Rule was issued and the matter was posted for final disposal on 7.8.1997 i.e. today. Mr.Minesh C.Dave appearing on behalf of the Limdi Municipality submits that so far no orders have been passed by the municipality with regard to the petitioner.

In the facts and circumstances of this case I find that the present petitioner is entitled to the similar treatment as has been given by the municipality to the respondent nos. 2 to 7 and therefore by this time the municipality ought to have passed the orders in his favour on the same line as have been passed with regard to respondent nos. 2 to 7. When the petitioner is entitled to such order, the passing of such orders in his case should not be avoided merely because his reference is pending and the reference has been decided in case of respondent nos. 2 to 7. In such matters the parity of the orders without any discrimination is the essence of the matters and the fairness required that respondent no.1 should have passed such orders with regard to the petitioner by now. In this view of the matter, the ends of justice requires that the direction be issued to the respondent municipality to pass appropriate orders with regard to the petitioner on the same line as has been passed with regard to the respondent nos. 2 to 7 while passing order dated 28.7.1997 in their favour and accordingly the petitioner's claim for permanency be honoured. Such appropriate orders shall be issued by the respondent municipality on or before 21.9.1997. On such orders being issued by the municipality the petitioner would withdraw the pending reference. This Special Civil Application is accordingly allowed and the rule is made absolute. No order as to costs.

m.m.bhatt